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09/939,061	08/24/2001	Lawrence Howell Sawyer	KCC-16,208	1730
35844	7590	04/05/2006	EXAMINER	
PAULEY PETERSEN & ERICKSON 2800 WEST HIGGINS ROAD HOFFMAN ESTATES, IL 60195			ANDERSON, CATHARINE L	
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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/939,061  
Filing Date: August 24, 2001  
Appellant(s): SAWYER ET AL.

**MAILED**  
**APR 05 2006**  
**GROUP 3700**

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Melanie L. Rauch  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 17 January 2006 appealing from the Office action mailed 19 August 2005.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

No amendment after final has been filed.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

5,827,259	LAUX et al.	10-1998
5,722,967	COLES	03-1998
5,451,442	PIENIAK et al.	09-1995

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-11, 15-30, 34-36, 58, 60, 61, and 63 are rejected under 35

U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Laux et al. (5,827,259).

Laux discloses an absorbent pad 48 comprising a single layer, as shown in figure 2. The absorbent pad 48 comprises between 30% and 85% superabsorbent material homogeneously mixed with between 15% and 70% pulp fluff, as disclosed in column 19, lines 50-65. The absorbent pad 48 has a density greater than about 0.28 g/cc, as disclosed in column 20, lines 1 and 15-17, and a thickness of less than 5 mm, as disclosed in column 20, lines 9-13. The absorbent pad 48 has an absorbent capacity of between about 14 and 40 g/g, as disclosed in column 19, lines 27-31. The edge compression, as described in the instant specification on pages 42 and 43, is dependent on the basis weight (i.e. the density and thickness) of the absorbent pad. Since the absorbent pad 48 disclosed by Laux is comprised of the same materials as the claimed invention, and has the same density, thickness, and absorbent capacity. Therefore, the edge compression of the absorbent pad 48 of Laux will inherently be the same as the claimed invention. Laux therefore discloses an absorbent pad that fulfills all limitations of the claim.

With respect to the limitation disclosing the absorbent pad has been compacted to a density of greater than about 0.28 g/cc, it is noted that the claim is drawn to an article of manufacture not a method of forming the article. The limitation of compacting

Art Unit: 3761

the article is a product by process limitation. As set forth in MPEP 2113, product by process claims are NOT limited to the manipulations of the recited steps, only to the structure implied by the steps. Once a product appearing to be substantially the same or similar is found, a 35 USC 102/103 rejection may be made and the burden is shifted to applicant to show an unobvious difference. See MPEP 2113.

With respect to claims 2 and 3, the absorbent pad 48 has a density greater than about 0.32 g/cc, as disclosed in column 20, lines 1 and 15-17.

With respect to claims 4 and 5, the absorbent pad comprises between 40% and 80%, and between 50% and 75% superabsorbent material, as disclosed in column 19, lines 50-65.

With respect to claim 6, the absorbent pad 48 further comprises a plurality of man-made fibers, as disclosed in column 18, lines 26-28.

With respect to claim 7, the absorbent pad 48 further comprises carrier particles, as disclosed in column 18, lines 26-28.

With respect to claims 8 and 9, the absorbent pad 48 is less than 5 mm thick, which includes the ranges of between 0.6 and 2.5 mm, and 0.7 and 2.0 mm.

With respect to claims 10 and 11, the absorbent pad 48 has an absorbent capacity of at least 16 g/g, as disclosed in column 19, lines 27-31.

With respect to claims 15-20, the absorbent pad 48 is present in an absorbent article, diaper, training pant, feminine hygiene product, incontinence product, and is capable of being used as a swim garment, as disclosed in column 2, lines 48-60.

With respect to claim 21, the absorbent material forms a gradient within the absorbent pad 48, as disclosed in column 18, lines 5-7.

With respect to claims 22 and 23, the absorbent pad comprises between 40% and 80%, and between 50% and 75% superabsorbent material, as disclosed in column 19, lines 50-65.

With respect to claim 24, the absorbent pad 48 further comprises a plurality of man-made fibers, as disclosed in column 18, lines 26-28.

With respect to claim 25, the absorbent pad 48 further comprises carrier particles, as disclosed in column 18, lines 26-28.

With respect to claims 26 and 27, the absorbent pad 48 is less than 5 mm thick, which includes the ranges of between 0.6 and 2.5 mm, and 0.7 and 2.0 mm.

With respect to claims 28-30 the absorbent pad 48 has an absorbent capacity of between 14 and 40 g/g, and at least 16 g/g, as disclosed in column 19, lines 27-31.

With respect to claim 34, the absorbent pad 48 includes more superabsorbent material at a first end than at a second end, as disclosed in column 20, lines 42-44.

With respect to claim 35, the absorbent pad 48 includes more superabsorbent material along a top surface, as disclosed in U.S. Patent 4,699,823 and incorporated by reference in column 18, lines 13-16.

With respect to claim 36, the absorbent pad 48 includes more superabsorbent material along a bottom surface, as disclosed in column 18, lines 8-13.

With respect to claim 58, the absorbent pad 48 is encompassed by a wrap sheet 70.

Art Unit: 3761

With respect to claim 60, the absorbent pad 48 is formed in a specific shape, as shown in figure 1.

With respect to claim 61, the absorbent pad 48 is encompassed by a wrap sheet 70.

With respect to claim 63, the absorbent pad 48 is formed in a specific shape, as shown in figure 1.

Claims 12-14 and 31-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Laux et al. (5,827,259) in view of Coles (5,722,967).

Laux discloses all aspects of the claimed invention but remains silent as to the gel strength of the superabsorbent material.

Coles discloses a superabsorbent material for use in an absorbent pad having a gel strength of at least 0.85, as described in column 7, lines 6-9. Superabsorbent materials having a high gel strength are well-known to be highly stable. It would therefore be obvious to one of ordinary skill in the art at the time of invention for the superabsorbent material of Laux to have a gel strength of at least 0.85, as taught by Coles.

Claims 37-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Laux et al. (5,827,259).

Laux discloses all aspects of the claimed invention but remains silent as to the variation of concentration of the superabsorbent material. It would have been obvious to one of ordinary skill in the art at the time of invention to vary the concentration of

Art Unit: 3761

superabsorbent by about 0.15 to about 0.25 g/cc, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

Claim 57 is rejected under 35 U.S.C. 103(a) as being unpatentable over Laux et al. (5,827,259) in view of Pieniak et al. (5,451,442).

Laux discloses all aspects of the claimed invention with the exception of the absorbent pad having a higher basis weight in a first zone than in a second zone.

Pieniak discloses an absorbent pad 14, as shown in figure 4, comprising compressions 40. The absorbent pad 14 has a reduced thickness and basis weight at compressions 40, as disclosed in column 7, lines 38-39. The compressions 40 act as folding lines to provide the article with an improved and more comfortable fit, as disclosed in column 10, lines 57-65.

It would therefore be obvious to one of ordinary skill in the art at the time of invention to construct the absorbent pad of Laux with the compressions of Pieniak to provide the article with an improved and more comfortable fit.

#### **(10) Response to Argument**

In response to the Appellant's argument that Laux fails to disclose densification of the absorbent pad, it is noted that the limitation disclosing the absorbent pad being compressed to a certain density is a product-by-process limitation, which is not limited to the manipulations of the recited steps, only to the structure implied by the steps. Laux discloses the structure implied by the steps, as well as the positively recited structural limitations of the instant claims.



In response to the Appellant's argument that Laux fails to disclose a density of greater than about 0.28 or about 0.30 g/cc, it is noted that given the disclosure by Laux of a basis weight of 900 gsm and thickness 3 mm (i.e. less than 5 mm), a density of 0.30 g/cc can be calculated for the absorbent pad of Laux.

In response to the Appellant's argument that the densification of the Appellant's absorbent pad is a deliberate process step that imparts distinctive structural characteristics to the final product, it is noted that the thinness and absorbent capacity recited in the Appellant's claimed invention are also disclosed in the prior art. The flexibility allegedly imparted to the absorbent pad by densification is described on page 5, lines 6-9, of the Appeal Brief, as being imparted not by the step of densification itself but rather by humidification or use of an embossing pattern.

In response to the Appellant's argument that the term "gel strength" is used to refer to a different property in Coles than in the present invention, it is noted that the method of determining the gel strength is not disclosed in the claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims.

#### **(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

This examiner's answer contains a new ground of rejection set forth in section (9) above. Accordingly, appellant must within **TWO MONTHS** from the date of this answer

Art Unit: 3761

exercise one of the following two options to avoid *sua sponte* dismissal of the appeal as to the claims subject to the new ground of rejection:

(1) **Reopen prosecution.** Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit or other evidence. Any amendment, affidavit or other evidence must be relevant to the new grounds of rejection. A request that complies with 37 CFR 41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

(2) **Maintain appeal.** Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR 41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1).

Extensions of time under 37 CFR 1.136(a) are not applicable to the TWO MONTH time period set forth above. See 37 CFR 1.136(b) for extensions of time to reply for patent applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.

Art Unit: 3761

Respectfully submitted,

C. Lynne Anderson



A Technology Center Director or designee must personally approve the new ground(s) of rejection set forth in section (9) above by signing below:

Frederick R. Schmidt

Conferees:

Tanya Zalukaeva

Angela Sykes

 SPE 3761

ANGELA D. SYKES  
SUPERVISORY PATENT EXAMINER  
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